IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 4526 of 2006 (O&M)

Date of decision : 28.10.2006.

Jasbir Singh

.....Petitioner.

Versus

Manjit Kaur

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Harbhajan Singh Saran, Advocate
for the petitioner.

Mr. Manoj Kumar,Advocate
for the respondent.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against an order dated 25.7.2006 passed by the learned Addl. District Judge, Jalandhar vide which the application moved under Order 6 Rule 17 read with Section 151 C.P.C. for amendment of the petition has been declined.

The petitioner in his divorce petition had mentioned that the marriage between the parties had taken place at village Bhandal Himmat, District Jalandhar whereas in fact, the marriage was solemnised at Laddar Palace, Nakodar , District Jalandhar.

The respondent-wife in her reply had denied the assertion made by the petitioner that the marriage had taken place at village Bhandal Himmat. It was the case of the respondent-wife that the marriage had taken place at Laddar Palace, Nakodar , District Jalandhar.

The petitioner thereafter sought amendment of the petition, which was allowed and in the amended petition again it was reasserted by the petitioner that the marriage between the parties had taken place at village Bhandal Himmat. In reply to the said amended petition the wife again took stand that the marriage in fact was performed at marriage palace at Laddar Palace, Nakodar. However, the petitioner in the replication again asserted that the marriage in fact was performed at village Bhandal Himmat. Thereafter the petition for amendment was filed under Order 6 Rule 17 C.P.C. claiming that the marriage was in fact performed at Laddar Palace, Nakodar. The amendment was disallowed, in view of the facts mentioned above.

The learned counsel for the petitioner contended that though marriage was performed at Laddar Palace, Nakodar, it was presumed by the petitioner that in fact the marriage would be deemed to have been performed at village of the bride i.e. Bhandal Himmat and it was on that account that the said assertions were made in the petition and the rejoinder. It was the further case of the petitioner that it was in order to bring the correct facts on record, it was found necessary to amend the petition to plead the correct facts.

The amendment has been disallowed by the learned court below primarily on the ground that after the commencement of the trial no amendment was permissible unless the Court came to the conclusion that in spite of due diligence the party seeking amendment could not have raised such plea or that the facts were not within the knowledge of the party at the

earlier occasion. The Court further held that as the petitioner was aware of the fact, therefore, no amendment could be allowed after the commencement of the trial.

The learned counsel for the petitioner places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Baldev Singh & Ors. etc. Vs. Manohar Singh & Anr. Etc., 2006(3) Civil Court Cases 573*** to contend that in the present case the trial has not yet commenced as no documents have been filed nor any evidence has been led by the parties. The contention of the learned counsel for the petitioner is that in view of the judgment of the Hon'ble Supreme Court the word commencement of trial has to be seen in the limited sense as meaning of the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments and, therefore, the order passed by the learned trial Court cannot be sustained.

The learned counsel for the respondent vehemently argued that in the present case in spite of the opportunity having been availed by the petitioner while amending the petition, he did not take any steps to correct the assertion made. He further argued that in spite of a specific stand in the written statement the petitioner had reasserted that the marriage in fact had taken place at village Bhandal Himmat and, therefore, learned trial Court was right in declining the application for amendment.

I have heard the learned counsel for the parties and find that this Court need not go into the merit of the case as the amendment sought does not in any way affect the merits of the case. The place of marriage being Laddar Palace, Nakodar has been asserted by the respondent which

can be admitted by the petitioner and thereby the amendment sought would loose all relevance and would have no bearing on the merit of the case.

The apprehension of the petitioner that this assertion may be used to prosecute the petitioner for filing a wrong affidavit is totally misconceived. No benefit can be taken of that assertion as the same was made bone fide by the petitioner keeping in view the fact that the bride belongs to village Bhandal Himmat and the place of marriage was irrelevant for the purposes of controversy in issue. As the present order does not decide any case on merit which may affect the rights of the parties, therefore, there is no ground to interfere in the exercise of revisional jurisdiction.

No merit.

Dismissed.

October 28,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**